Remarks

This Application has been carefully reviewed in light of the Final Office Action mailed October 1, 2004. Applicants have made a clarifying amendment to Claim 6. This amendment is not considered narrowing and is not made in relation to patentability. Furthermore, Applicants respectfully submit that this amendment does not raise any new issues or require the Examiner to perform a new search, and that this amendments will place the Application in better condition for appeal. Thus, Applicants respectfully request that the Examiner enter this amendment. Applicants respectfully request reconsideration and allowance of all pending claims.

I. Information Disclosure Statement

Applicants mailed an Information Disclosure Statements (IDS) and accompanying PTO-1449 form on April 7, 2004, but the submitted references were not indicated as considered by the Examiner in this Final Office Action. Additionally, Applicants mailed a Request for Consideration of an Information Disclosure Statement Timely Filed on October 21, 2004. Applicants respectfully request the Examiner to indicate consideration of the submitted references by initialing next to each reference on the PTO-1449 form. For the Examiner's convenience, copies of the IDS and PTO-1449 form are attached to this Response.

II. Applicants' Claims are Allowable over the Proposed *Vig-Sanders* Combination

The Examiner rejected Claims 1-4, 11-19, 21, 31-34, 41-48, and 50 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,038,554 to Vig ("*Vig*") in view of U.S. Patent 6,411,936 to Sanders ("*Sanders*"). Applicants respectfully disagree and discuss Claim 1 as an example.

A. The Proposed *Vig-Sanders* Combination Fails to Disclose, Teach, or Suggest Various Aspects of Claim 1

One purpose of *Vig* is to determine the non-subjective value of something so that the non-subjective value can be compared to the dollar value of that something (i.e., the price) to determine whether that something is actually a good deal for a specific inquiring person. For example, *Vig* states, "The present invention's method is the instant unearthing of the dollar

value a hypothetically perfectly knowledgeable society would say something is worth." (Column 5, Lines 24-26) In particular, *Vig* discloses determining the non-subjective value of a probed entity (e.g., a car or a doctor). Thus, the thing being valued in *Vig* is the probed entity.

The Examiner equates this "probed entity" disclosed in *Vig* with "identifying one or more intellectual capitals to be measured, wherein each intellectual capital comprises" "human capital," "structural capital," and "external capital," as recited in Claim 1. First, Applicants respectfully submit that there is no disclosure, teaching, or suggestion in *Vig* that the probed entity is or could be "intellectual capital."

The Examiner relies on *Vig*'s vague statement that the probed entity could be "any other known or imaginable entity," concluding that "intellectual capital does fall into any known or imaginable entity group." (Office Action, Page 14) However, such a vague statement in *Vig* clearly fails to disclose, teach, or suggest the concrete limitations specifically recited in Claim 1, particularly that the thing being measure comprises intellectual capital of an enterprise and that each intellectual capital comprises:

- human capital comprising one or more capabilities of one or more individuals associated with the enterprise;
- structural capital comprising experience and expertise of the enterprise embedded in one or more processes, policies, and systems associated with the enterprise; and
- external capital comprising a value of one or more business relationships of the enterprise with one or more entities.

Because the thing being valued in *Vig*, the probed entity, is not disclosed as intellectual capital, the thing being measured in Claim 1, the probed entity cannot be equated with the intellectual capital recited in Claim 1.

With respect to intellectual capital comprising human capital, the Examiner relies on *Vig* and argues that *Vig*'s disclosure that the probed entity can include politicians, "where politicians represent individuals," can be equated with the intellectual capital comprising human capital. (*See* Office Action, Page 2) However, the disclosure of an "individual" clearly fails to disclose, teach, or suggest that the intellectual capital comprises "human

capital comprising ***one or more capabilities of one or more individuals*** associated with the enterprise," as recited in Claim 1.

Additionally, the Examiner contends that "Vig discloses that a societal dollar value of the probed target unit is derived for human factors such as a human being's opinion as shown in claim 18 of Vig. In claim 18 of Vig, Vig discloses that 'current societal dollar value or ranking of said probed target unit . . . being able accurately to reflect and express the entire range of a human being's opinions, inclinations . . . .'" (Office Action, Page 15) This statement in *Vig* also fails to disclose intellectual capital as recited in Claim 1. The societal dollar value derived from such human factors does not disclose, teach, or suggest, for example, "human capital comprising ***one or more capabilities of one or more individuals*** associated with the enterprise," as recited in Claim 1.

The Examiner acknowledges, and Applicants agree, that *Vig* fails to disclose that each intellectual capital comprises human capital, structural capital, and external capital. (Office Action, Page 4) However, the Examiner argues that *Sanders* discloses structural capital and external capital. Applicants respectfully disagree.

For example, Applicants maintain that *Sanders* fails to disclose, teach, or suggest each intellectual capital comprising "structural capital comprising experience and expertise of the enterprise embedded in one or more processes, policies, and systems associated with the enterprise," as recited in Claim 1. The portion of *Sanders* cited by the Examiner as disclosing structural capital merely states that "information about human resources includes at least one of employee functions, relevant experience, training, knowledge and personality attributes, skills, capabilities, and contact information regarding the various individuals in the enterprise together with their current responsibilities, their position in the organizational structure, their current knowledge activity, current capability utilization, salaries, wages, benefits, and bonuses," with "organizational structure" being the term highlighted the Examiner as disclosing structural capital. (Column 20, Lines 31-39; Office Action, Pages 4 and 15-16) Applicants do not agree that, nor has the Examiner explained how, an employee's position in an organizational structure discloses, teaches, or suggests "structural capital comprising

experience and expertise of the enterprise ***embedded in one or more processes, policies, and systems associated with the enterprise,***" as recited in Claim 1.

As another example, Applicants maintain that *Sanders* fails to disclose, teach, or suggest each intellectual capital comprising "external capital comprising a value of one or more business relationships of the enterprise with one or more entities," as recited in Claim 1. The portion of *Sanders* cited by the Examiner as disclosing external capital merely states "wherein the model includes information about technology trends, demographics, the industry in general, and other externalities related to the specific product or service markets of the enterprise," with "externalities" being the term highlighted the Examiner as disclosing external capital. (Column 20, Line 66 through Column 21, Line 2; Office Action, Pages 4 and 16) Again, Applicants do not agree that, nor has the Examiner explained how, the vague term "externalities" discloses, teaches, or suggests "external capital comprising ***a value of one or more business relationships of the enterprise with one or more entities***," as recited in Claim 1.

Furthermore, even assuming for the sake of argument only that *Sanders* did disclose, teach, or suggest "structural capital" and "external capital," as recited in Claim 1 (which it does not), this still would not disclose, teach, or suggest each intellectual capital including each of "human capital," "structural capital," and "external capital," let alone including each of "human capital," "structural capital," and "external capital" in each intellectual capital for purposes of measuring the intellectual capital of an enterprise.

Moreover, the proposed *Vig-Sanders* combination fails to disclose, teach, or suggest, as recited in Claim 1, measuring intellectual capital by:

- selecting a set of metrics that are present within the identified intellectual capitals, the set of metrics comprising one or more metrics present within the human capital, one or more metrics within the structural capital, and one or more metrics within the external capital, wherein the set of metrics comprises one or more monetary metrics and one or more non-monetary metrics;
- assigning values to the set of selected metrics;
- scaling the set of valued metrics, wherein the scaled non-monetary metrics and monetary metrics are operable to be mathematically associated; and
- quantifying the identified intellectual capitals based on the scaled metrics.

For example, the proposed *Vig-Sanders* combination fails to disclose, teach, or suggest "selecting a set of metrics that are present within the identified intellectual capitals, the set of metrics comprising one or more metrics present within the human capital, one or more metrics within the structural capital, and one or more metrics within the external capital, wherein the set of metrics comprises one or more monetary metrics and one or more non-monetary metrics," as recited in Claim 1. Applicants respectfully submit that the Examiner's contention to the contrary requires many unsupportable assumptions.

First, the Examiner's position assumes that the proposed *Vig-Sanders* combination discloses, teaches, or suggests intellectual capital comprising "human capital," "structural capital," and "external capital." As Applicants demonstrated above, it does not.

Second, even assuming that *Sanders* did make up for *Vig*'s deficiencies with respect to at least "structural capital" and "external capital" (which it does not), the Examiner's position further assumes that it would have been obvious to one of ordinary skill in the art to modify *Vig*'s probed entity to include such "structural capital" and "external capital," which (as described below in Section II.B) it would not have been.

Third, the Examiner's position further assumes that, having modified *Vig* to include such "structural capital" and "external capital" purportedly disclosed in *Sanders* (and even further based on the assumption that *Vig* itself discloses "human capital" and that it would have been obvious to include all three in each "intellectual capital"), it would have been obvious to select "a set of metrics that are present within the identified intellectual capitals [each including human capital (purportedly disclosed in *Vig*), and each including structural capital and external capital (which the Examiner modified *Vig* to include based on *Sanders*)]," as recited in Claim 1. Additionally, as recited in Claim 1, the selected set of metrics (for each intellectual capital) comprise one or more metrics present within the human capital, one or more metrics within the structural capital, and one or more metrics within the external capital. Thus, even assuming that *Vig* discloses intellectual capital comprising human capital (which it does not) and even further assuming that *Vig* discloses selecting a set of metrics for such intellectual capital comprising "one or more metrics present within the

human capital" (which it does not), the Examiner would then still have to modify *Vig* to select a set of metrics for each intellectual capital comprising "one or more metrics within the structural capital" (which the Examiner modified *Vig* to include based on *Sanders*) and "one or more metrics present within the external capital" (which the Examiner modified *Vig* to include based on *Sanders*). Furthermore, Claim 1 recites that the selected set of metrics "comprises one or more monetary metrics and one or more non-monetary metrics," as recited in Claim 1. Applicants respectfully submit that by employing these many assumptions, the Examiner has not established a *prima facie* case of obviousness consistent with the requirements of applicable statutes, case law, and regulations.

The Examiner asserts that "selecting a set of metrics that are present within the identified intellectual capitals . . . ," as recited in Claim 1, is disclosed at "Col. 73, lines 49-54, where metrics are represented by the characteristics, quality, trait, etc., Col. 6, line 65-Col. 7, line 4, where the monetary worth represents the monetary metric, Col. 6, lines 65-67, where non-monetary metrics are represented by the 'ride quality' and 'reliability'" in *Vig*. Applicants respectfully traverse the Examiner's position. As Applicants have repeatedly pointed out, the cited monetary worth (asserted by the Examiner to equate with "monetary metrics" recited by the present claims) is the result of *Vig*'s valuation, not a "metric" used in computing *Vig*'s valuation. For example, *Vig* discloses that the system is for "discovering both an entity's actual current societal monetary value and its contemporary monetary worth." *Vig*, Abstract. In another example, *Vig* teaches that what "an entity is, does and has are what matter *as to its true monetary worth or ranking*." *Vig*, 2:58-59 (emphasis added). Moreover, *Vig* states that "[p]rice is *never* a factor of value." *Id*, 2:61 (emphasis added).

Therefore, *Vig* fails to teach, suggest, or disclose "wherein the set of metrics comprises one or more monetary metrics and one or more non-monetary metrics," as recited by the Claim 1. Furthermore, *Vig* certainly fails to disclose, teach, or suggest "the set of metrics comprising one or more metrics present within the human capital, one or more metrics within the structural capital, and one or more metrics within the external capital," as recited in Claim 1

Furthermore, Applicants respectfully submit that the Examiner's many assumptions discussed above are only compounded as the Examiner attempts to map the proposed *Vig-Sanders* combination to the remaining elements of Claim 1. This further reveals that Examiner has not established a *prima facie* case of obviousness consistent with the requirements of applicable statutes, case law, and regulations, based on these many assumptions.

For at least these reasons, Applicants respectfully submit that the proposed *Vig-Sanders* combination fails to disclose, teach, or suggest each and every limitation recited in Claim 1. Thus, Applicants respectfully request reconsideration and allowance of Claim 1 and its dependent claims. For analogous reasons, Applicants respectfully request reconsideration and allowance of independent Claim 31 and its dependent claims.

B. The Proposed Combination of *Vig* and *Sanders* is Improper

Applicants maintain that the rejection of Applicants' claims is also improper because the Examiner has not shown the required teaching, suggestion, or motivation in *Vig*, *Sanders*, or in the knowledge generally available to those of ordinary skill in the art at the time of the invention to combine or modify *Vig* or *Sanders* in the manner the Examiner proposes. The rejected claims are allowable for at least this reason.

In order to establish a prima facie case of obviousness, three requirements must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge available to one skilled in the art, to modify a reference or combine multiple references; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or combination of references) must teach or suggest all of the claim limitations. *See* M.P.E.P. §§ 2142 and 2143.

The determination of whether an invention is obvious in view of prior art considers "if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains." 35 U.S.C. §

103. Moreover, the mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Fritch,* 972 F.2d 1260, U.S.P.Q.2d 1780 (Fed. Cir. 1992).

Furthermore, obviousness cannot be established by combining or modifying the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination or modification. The M.P.E.P. sets forth a strict legal standard for finding obviousness based on a combination of references. "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge [that was] generally available to one of ordinary skill in the art at the time of the invention." M.P.E.P. § 2143.01. Even a determination that it would have been obvious to one of ordinary skill in the art at the time of the invention to try the proposed combination or modification is not sufficient to establish obviousness without a suggestion in the prior art of the desirability of such a combination or modification. Speculation in hindsight that "it would have been obvious" to make the proposed combination or modification because it would be helpful is insufficient to establish obviousness and amounts to impermissible hindsight reconstruction of the applicant's invention.

If "common knowledge" or "well known" art is relied upon by the Examiner to combine or modify the references, the Examiner should provide a reference pursuant to M.P.E.P. § 2144.03 to support such an argument. If the Examiner relied on personal knowledge to supply the required motivation or suggestion to combine or modify the references, the Examiner should provide an affidavit supporting such facts pursuant to M.P.E.P. § 2144.03.

With regard to the proposed *Vig-Sanders* combination, the Examiner indicates that "[i]t would have been obvious to one of ordinary skill in the art at the time of applicants' invention to incorporate structural and external capital with the motivation of measuring intellectual capital of an enterprise according to a wide variety of defined capital." (Office

Action, Page 4). First, as discussed above, Applicants dispute that *Sanders* discloses structural and external capital, as recited in Applicants claims. Second, the Examiner has merely proposed an alleged advantage of combining *Vig* with *Sanders*. The Examiner has not pointed to any portions of either *Vig* or *Sanders* that would teach, suggest, or motivate one of ordinary skill in the art at the time of invention to incorporate the non-subjective valuation system disclosed in *Vig* with the enterprise value enhancement system and method disclosed in *Sanders*. Instead, the Examiner now states that "the combination of these two references is valid since both references disclose systems for determining the value of an entity, such as an enterprise (as disclosed in Sanders), by receiving feedback from users through surveys." (Office Action, Page 16) The simple fact that two references may relate to similar subject matter is insufficient to provide the requisite teaching, suggestion, or motivation to combine the particular teachings of one reference with the particular teachings of the other reference.

It certainly would not have been obvious to one of ordinary skill in the art at the time of the invention, based solely on the prior art, *to even attempt* to incorporate into the non-subjective valuation system disclosed in *Vig* such an enterprise value enhancement system and method as the one disclosed in *Sanders*. Even more clearly, it certainly would not have been obvious to one of ordinary skill in the art at the time of the invention, based solely on the prior art, *to actually* incorporate into the non-subjective valuation system disclosed in *Vig* such an enterprise value enhancement system and method, which would be required to establish a *prima facie* case of obviousness under the M.P.E.P. and the governing Federal Circuit case law. This is particularly true in light of the fact that *Vig* does not even relate to intellectual capital as recited in Applicants' claims. Additionally, the lack of a motivation or suggestion to combine these references is further evidenced by the many assumptions discussed above in Section II.A required of the Examiner in order to combine these references.

Accordingly, since the prior art fails to provide the required teaching, suggestion, or motivation to combine *Vig* with *Sanders* in the manner the Examiner proposes, Applicants respectfully submit that the Examiner's conclusions set forth in the Office Action fall well short of the requirements set forth in the M.P.E.P. and the governing Federal Circuit case law

for demonstrating a *prima facie* case of obviousness. Thus, Applicants respectfully submit that the Examiner's proposed combination of *Vig* with *Sanders* appears to be merely an attempt, with the benefit of hindsight, to reconstruct Applicants' claims and is unsupported by the teachings of *Vig* and *Sanders*. Applicants respectfully submit that the rejection must therefore be withdrawn.

For at least these additional reasons, Applicants respectfully request reconsideration and allowance of Claim 1 and its dependent claims. For analogous reasons, Applicants respectfully request reconsideration and allowance of independent Claim 31 and its dependent claims.

III. Applicants' Claims are Allowable over the Proposed *Vig-Sanders-Eder* Combination

The Examiner rejects Claims 5-10, 20, 22-30, 35-40, 49, and 51-59 under 35 U.S.C. § 103(a) as being unpatentable over *Vig* in view of *Sanders*, and further in view of U.S. Patent 6,321,205 to Eder ("*Eder*").

Claims 5-10, 20, and 22-30 (which depend from independent Claim 1) and Claims 35-40, 49, and 51-59 (which depend from independent Claim 31) depend from independent Claims 1 and 31, which Applicants have shown above to be clearly allowable. Applicants respectfully submit that *Eder* fails to make up for any of the deficiencies of *Vig* and *Sanders* discussed above. Thus, Claims 5-10, 20, 22-30, 35-40, 49, and 51-59 are allowable at least because of their dependence on Claims 1 and 31. In addition, Claims 5-10, 20, 22-30, 35-40, 49, and 51-59 recite further patentable distinctions over the prior art of record. To avoid burdening the record and in view of the clear allowability of Claims 1 and 31, Applicants do not specifically discuss these distinctions in this Response. However, Applicants reserve the right to discuss these distinctions on Appeal, if appropriate. Furthermore, Applicants do not admit that the proposed combination of *Vig*, *Sanders*, and *Eder* is possible or that the Examiner has demonstrated the required teaching, suggestion, or motivation to combine these references. For at least these reasons, Applicants respectfully request reconsideration and allowance of Claims 5-10, 20, 22-30, 35-40, 49, and 51-59.

IV. No Waiver

All of Applicants' arguments and amendments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the *Vig*, *Sanders*, and *Eder* references. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicants are sufficient to overcome the Examiner's rejections.

Conclusion

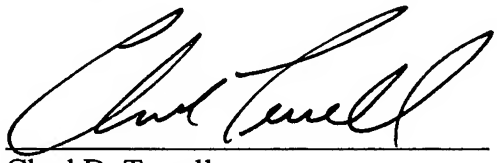
Applicants have now made an earnest attempt to place this case in condition for immediate allowance. For the foregoing reasons and for other apparent reasons, Applicants respectfully request allowance of all pending claims.

If the Examiner feels that prosecution of the present Application may be advanced in any way by a telephone conference, the Examiner is invited to contact the undersigned attorney at 214.953.6813.

Although Applicants believe no fees are due, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 05-0765 of Electronic Data Systems Corporation.

Respectfully submitted,

BAKER BOTTS L.L.P.
Attorneys for Applicants



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Donna M. Stemmer et al.
Serial No.:	10/029,657
Filing Date:	December 20, 2001
Group Art Unit:	3623
Examiner:	Akiba K. Robinson Boyce
Title:	BALANCE SHEET AND METHOD FOR MEASURING INTELLECTUAL CAPITAL

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Dear Sir:

INFORMATION DISCLOSURE STATEMENT

Applicants respectfully request, pursuant to 37 C.F.R. § 1.56, 1.97, and 1.98, that the references listed on the attached PTO-1449 form be considered and cited in the examination of the above-identified patent application. Copies of these references are enclosed for the convenience of the Examiner. Furthermore, pursuant to 37 C.F.R. § 1.97(h), no representation is made that the references qualify as prior art or that the references are material to the patentability of the present application.

The items contained in this Information Disclosure Statement were first cited in a communication from a foreign patent office in a counterpart foreign application of a related application not more than three months prior to the filing of this Information Disclosure Statement.

No fees are believed to be due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 05-0765 of Electronic Data Systems Corporation.

Respectfully submitted,

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PTO-1449

Information Disclosure Citation in an Application

Application No.	Applicant(s)
10/029,657	Donna M. Stemmer et al.

Docket Number	Group Art Unit	Filing Date
014208.1395 (70-00-006)	3623	December 20, 2001

U.S. PATENT DOCUMENTS

		DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS	FILING DATE
	A						
	B						
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	K						
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FOREIGN PATENT DOCUMENTS

		DOCUMENT NO.	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION YES	TRANSLATION NO
	M	EP 1265179 A2	11/12/2002	EP	G06F	017	X	
	N							
	O							
	P							
	Q							

NON-PATENT DOCUMENTS

		DOCUMENT (Including Author, Title, Source, and Pertinent Pages)	DATE
	R	International Search Report for PCT/US 02/40961, 7 pages	02/19/2004
	S		
	T		

EXAMINER	DATE CONSIDERED

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